

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	Case No. 1:10CV2845
)	(1:06CR125)
Plaintiff-Respondent,)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
JESUS SOSA-ORTIZ,)	
)	
Defendant-Petitioner.)	STIPULATION OF THE PARTIES
)	REGARDING DEFENDANT'S
)	PRO SE MOTION TO VACATE
)	<u>SENTENCE</u>

Now comes the Plaintiff-Respondent, United States of America, by and through its counsel, Steven M. Dettelbach, United States Attorney, and Phillip J. Tripi, Assistant United States Attorney, and the defendant by and through undersigned counsel, Gretchen Holderman, and provides this Honorable Court with stipulations in response to the defendant's pro se motion to vacate sentence pursuant to 28 U.S.C. § 2255:

1. The parties jointly ask this Honorable Court to vacate the sentence in United States v. Jesus Sosa-Ortiz, Case No. 1:06CR125-2 and to resentence defendant Jesus Sosa-Ortiz in accordance with the below stipulated agreed points.
2. For purposes of resentencing the defendant consistent with the recommended sentence contained in these stipulations, the defendant waives his personal appearance for the purpose of resentencing and requests this Honorable Court to enter a sentence consistent with the below stipulations.
3. The sentence filed on April 27, 2007, should be vacated in Case No. 1:06CR125-2

since the existing judgment and conviction order filed is not consistent with the agreement of the parties.

4. The parties stipulate that the method used by this Honorable Court in announcing the sentence and reducing the sentence to a judgment and conviction order was not effective to accomplish the intention of the parties when entering into the plea agreement.

5. The parties stipulate that the plea agreement entered into and reflected in document number 571, provided that the defendant would be given full credit for any prior pretrial detention and sentence he had served in United States v. Jesus Sosa-Ortiz, Case No. 1:05CR286, which case was assigned to the Honorable David D. Dowd. In that case, the defendant was arrested on May 13, 2005, in a criminal complaint charging him with Illegal Reentry Following Deportation. The defendant was placed in pretrial detention and remained in pretrial detention until the resolution of this case on this charge. The defendant was indicted on June 8, 2005, in a one-count indictment. The defendant pled guilty to the charge of Illegal Reentry Following Deportation without the benefit of a written plea agreement on September 1, 2005. On November 29, 2005, the defendant was sentenced to 30 months incarceration in Case No. 1:05CR286 and was given credit for time served in pretrial detention.

6. The parties further stipulate that it was determined that the act of the defendant being found in the Northern District of Ohio Eastern Division, which led to the charge of Illegal Reentry Following Deportation was directly related to his criminal activity reflected by his plea of guilty to count one of the superseding indictment charging him with Conspiracy to Smuggle, Harbor and Transport Undocumented Aliens, in Case No. 1:06CR125-2. As such, the parties had agreed in a written plea agreement that the defendant would be entitled to have his sentence begin as of the date of his initial arrest on the illegal reentry charge. This Honorable Court

accepted the plea agreement and both the plea transcript and sentencing transcript contain lengthy colloquies related to fashioning an appropriate sentence to reflect the agreement of the parties.

7. The parties further stipulate that the defendant had served in excess of 23 months imprisonment related to his pretrial detention and sentence in Case No. 1:05CR286 at the time he was sentenced in Case No. 1:06CR125-2 on April 27, 2007. The parties propose a sentence which would amount to a 24 month downward variance in the overall sentence.

8. The parties specifically stipulate and request the Court to resentence the defendant to 72 months on count one rather than the 96 months reflected in the original judgment and conviction order; to 60 months on court three which is consistent with the original sentence on that count; to 72 months on count eight rather than the 96 months sentence that was issued in the original judgment and conviction order; to 48 months on count 21, rather than the 60 months contained in the original judgment and conviction order; and 2 years consecutive mandatory time on count 22, consecutive only to count 21, which is the same sentence that was provided for in the original judgment and conviction order. As was reflected in the original judgment and conviction order, the parties request that the sentences on counts 1, 3, 8, and 21 run concurrently and that the two-year sentence on count 22 run consecutive only to count 21. As such, the overall sentence would reflect the original plea agreement entered into by the government and defendant Jesus Sosa-Ortiz which provided that his total imprisonment resulting from his convictions in both cases would not exceed 96 months in the aggregate. Further the proposed variances would be in the

interest of justice and would have the effect of giving him proper consideration for the nearly 24 months he had already served in custody prior to being sentenced in Case No. 1:06CR125-2.

9. The parties stipulate that there should be no further revisions to the judgment and conviction order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2011, a copy of the foregoing Stipulation of the Parties Regarding Defendant's Pro Se Motion to Vacate Sentence was filed electronically. Notice of this filing was sent by regular U.S. Mail to Jesus Sosa-Ortiz, #30027-160, Federal Correctional Institution, 37910 N. 45th Avenue, Phoenix, Arizona 85086.

s/Phillip J. Tripi
Phillip J. Tripi
Assistant U. S. Attorney